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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 380-153										
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>20 May 2008</u></p> <p>Signature <u><i>Elise D. Bray</i></u></p> <p>Typed or printed name <u>Elise D. Bray</u></p>		Application Number 10/788,809	Filed 02/27/2004									
		First Named Inventor Joel E. Hitzelberger										
		Art Unit 1744	Examiner David A. Redding									
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant/inventor.</td><td><u><i>Warren D. Schickel</i></u> Signature</td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td><u>Warren D. Schickel</u> Typed or printed name</td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>31,057</u></td><td><u>(859) 252-0889</u> Telephone number</td></tr><tr><td><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td><u>20 May 2008</u> Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <table border="1"><tr><td><input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.</td></tr></table>				<input type="checkbox"/> applicant/inventor.	<u><i>Warren D. Schickel</i></u> Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>Warren D. Schickel</u> Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>31,057</u>	<u>(859) 252-0889</u> Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>20 May 2008</u> Date	<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.
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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Serial No.: 10/788,809

Docket No. 380-153

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	:	
JOEL E. HITZELBERGER	:	Conf. No. 7847
Serial No.: 10/788,809	:	Group Art Unit: 1744
Filed: February 27, 2004	:	Examiner: David A. Redding
For: NOZZLE ASSEMBLY WITH EDGE	:	
CLEANING THROUGH AGITATOR	:	
CAVITY	:	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is a Pre-Appeal Brief Request For Review of the following rejection made in the Final Office Action mailed on 4 April 2008. This document is being submitted concurrently with a Notice of Appeal. During the examination of this application, clear errors have been made in the Examiner's rejections and the Examiner has omitted one or more essential elements needed to establish a prima facie rejection.

In the Office Action of 18 April 2007 the examiner stated:

Hitzelberger et al. discloses a vacuum cleaner, comprising: a nozzle assembly 12; a cannister assembly 14 connected to said nozzle assembly; a suction generator 30 carried on one of said nozzle assembly and said cannister assembly; and a dirt collection vessel 26 carried on one of said nozzle

assembly and said cannister assembly, said suction generator drawing air entrained with dirt through said nozzle assembly to said dirt collection vessel before exhausting clean air back into the environment; said vacuum cleaner being characterized by: said nozzle assembly having a housing including a main cavity 32 and at least one intake opening in fluid communication with said main cavity; and an edge cleaning duct 36 having an inlet adjacent an edge of said housing and an outlet in fluid communication with said main cavity.

In addition, the examiner stated in that Office Action that:

The patent to Sovis et al. discloses a vacuum cleaner, comprising: a nozzle assembly 10; a cannister assembly 60 connected to said nozzle assembly; a suction generator 68 carried on one of said nozzle assembly and said cannister assembly; and a dirt collection vessel 124 carried on one of said nozzle assembly as a cannister assembly, said suction generator drawing air entrained with dirt through said nozzle assembly to said dirt collection vessel before exhausting clean air back into the environment; said vacuum cleaner being characterized by: said nozzle assembly having a housing including a main cavity 12 with an agitator 14 mounted therein, and at least one intake opening in fluid communication with said main cavity; and an edge cleaning duct 40 having an inlet, discrete from the main cavity (see figure 1), adjacent an edge of said housing and an outlet in fluid communication with said main cavity.

In response to these rejections, the applicant filed a RCE and an amendment wherein independent claims 1 and 14 were amended to change the wording from “main cavity” to “agitator cavity”. As amended, claims 1 and 14 explicitly provide that the edge cleaning duct has an inlet adjacent an edge of the housing and an outlet discharging into the agitator

cavity. On page 8, the remarks in this amendment included the following argument:

As explicitly noted by the examiner in the Office Action, US Patent 7,124,467 Hitzelberger et al. discloses an edge cleaning duct 46 having an outlet 66 which discharges into the dust container 26. The edge cleaning duct 46 does not discharge into the agitator cavity 32 housing the agitator 34. Accordingly, the Hitzelberger et al. reference does not disclose the structure set forth in claims 1 and 14 of the present application.

As stated by the examiner in the Office Action, the Sovis et al. reference discloses an edge cleaning duct 40 having an outlet 132 discharging into the filter bag 124. Clearly, the edge cleaning duct 40 does not have an outlet discharging into the agitator cavity or brush chamber 12. Accordingly, the Sovis et al. patent does not disclose the structure set forth in claims 1 and 14 of the present application.

In response to this amendment and these arguments, the examiner issued a Final Action Rejection of claims 1-7 and 14-20 stating on page 4 of that Office Action:

Applicant's argument that Hitzelberger et al. or Sovis et al. have an edge cleaning duct with an outlet discharging into the main cavity is unpersuasive. Hitzelberger et al. has an out 66 from the edge cleaning duct 46 which discharges into the main cavity 26 and Sovis et al. has outlet 132 which discharges into the main cavity from duct 140.

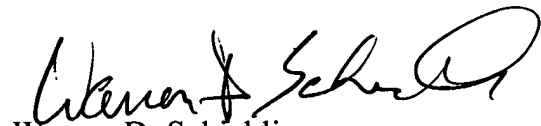
Here the examiner grossly misstates the applicant's argument. It is clear from the examiner's comments, the examiner did not consider the amendments made in the language to claims 1 and 14 explicitly reading on an edge cleaning duct having an outlet discharging into an agitator cavity rather than a main cavity. Based upon the language in the Office

Action and the teachings of the cited art, it is clear that the examiner did not consider (1) the amendments previously made to claims 1 and 14, or (2) the arguments presented by the applicant in the latest amendment. The fact that the cited art discloses edge cleaning ducts that feed into a dirt cup or filter bag is absolutely immaterial to the claimed invention requiring such an edge cleaning duct to feed into the agitator cavity. The examiner is not in a position that allows him to ignore amendments made to the language of the claims he is examining.

Upon careful review and consideration it is believed the Panel will agree that the Examiner has committed the foregoing reversible errors and find all claims patentable over the cited prior art. Accordingly, the early issuance of a formal Notice of Allowance is earnestly solicited. Any fees required in connection with this response may be debited to Deposit Account 11-0978.

Respectfully submitted,

KING & SCHICKLI, PLLC

A handwritten signature in black ink, appearing to read "Warren D. Schickli", is written over the printed name.

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